No. 72-1322

In the Supreme Court of the United States

OCTOBER TERM, 1973

CAROLYN BRADLEY, ET AL., PETITIONERS

v.

THE SCHOOL BOARD OF THE CITY OF RICHMOND, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the district court had authority to award attorneys' fees for the plaintiffs' successful efforts in obtaining injunctive relief to require their school board to adhere to its constitutional and statutory duty to desegregate the public schools.

INTEREST OF THE UNITED STATES

Lawsuits by private parties are an important supplement to the program of the United States for enforcing Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c, as well as other civil rights statutes. School desegregation suits are private in form only;

the relief obtained is in vindication of a national policy of high priority. The availability of attorneys' fee awards necessarily expands the scope of enforcement and augments the resources of the federal government in civil rights cases. Cf. *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 210.

Congress has recognized that the Nation must in large measure rely upon private litigation as a means of securing compliance with civil rights laws and the constitutional requirements they reflect. See *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401. For example, Congress has expressly limited the Attorney General's authority to sue in the school desegregation area to instances where the Department of Justice has received a written complaint and certifies that the complainant cannot initiate and maintain litigation on his own. 42 U.S.C. 2000c. Also, Congress has expressly authorized the award of counsel fees in several civil rights statutes. See, *e.g.*, 42 U.S.C. 2000a–3(b) (public accommodations), 2000e–5(k) (employment), and 3612 (housing).[1] The efficacy of private litigation in these fields has significant implications for the responsibilities and resources of the United States.

The United States, however, is not likely to be directly affected by the decision in this case in its capacity as a litigant because Congress has provided that, except where specifically authorized by statute (see, *e.g.*, n. 2, *infra*) attorneys' fees shall not be included in a judgment for costs in a civil action by or against the United States or any agency or official thereof acting in his official capacity. 28 U.S.C. 2412.

[1] See also n. 2, *infra*.

STATEMENT

The facts are described in detail in the briefs of the parties. We summarize here only the procedural history of this litigation.

This class action, commenced in 1961, sought equitable relief requiring the School Board of the City of Richmond, Virginia, to desegregate the Richmond public schools (App. 113a, 160a–161a, n. 1). The case before this Court concerns solely the propriety of the award to petitioners of attorneys' fees for desegregation litigation concerning the schools in Richmond for the period from March 10, 1970, to January 29, 1971 (App. 121a, n. 5).

In a prior stage of this litigation the district court had approved a "freedom of choice" plan to desegregate the Richmond public schools. See *Bradley* v. *School Bd.*, 345 F. 2d 310 (C.A. 4), remanded on other grounds, 382 U.S. 103. On May 27, 1968, however, this Court held that freedom of choice plans were constitutionally inadequate unless they actually resulted in a unitary desegregated school system, and the Court imposed on school boards the affirmative duty to "come forward" with realistic plans to achieve such systems "now." *Green* v. *County School Bd.*, 391 U.S. 430, 438–441. Despite the apparent inadequacy of the then-existing plan, the unconstitutionality of which was eventually conceded (App. 114a), the respondent school board failed to adopt a new plan that would satisfy the applicable constitutional and statutory requirements.

Accordingly, on March 10, 1970, petitioners moved in the district court (App. 25a) for the replacement

of Richmond's freedom of choice plan with a plan that complied with this Court's decision in *Green* v. *County School Board*. The motion included a request for attorneys' fees. Between that date and May 26, 1971, when the district court ruled on the motion for attorneys' fees, the court had disapproved two plans submitted by the respondents (App. 115a–118a), and had finally accepted a third for the 1971–1972 school session (App. 118a). The court determined that, on the record before it, an award of attorneys' fees in the sum of $43,355 was justified by the respondents' conduct both in making necessary petitioners' 1970 reopening of the case and in the course of the ensuing phase of this litigation (App. 128a–135a). Alternatively, the district court held that the fee award was justified by the fact that the petitioners had acted as "private attorneys general" in securing respondents' compliance with important constitutional and statutory obligations, this vindication of paramount federal policies having benefitted not only the petitioners but an entire class (App. 128a, 135a–140a).

The court of appeals (with one judge dissenting) reversed, holding that the district court was without authority to award attorneys' fees. The court held, first, that the respondents' conduct did not constitute the "obdurate obstinacy" which it said was a requisite for an attorney fee award in school desegregation cases (App. 161a–177a). The court further concluded that, in the absence of express statutory authority, there is no other basis on which attorneys' fees could properly be awarded (App. 177a–186a).

Finally, employing the maxim *expressio unium est exclusio alterius,* the court relied upon the fact that a provision for attorneys' fees in school desegregation cases was not included in the Civil Rights Act of 1964 as indicating a congressional intent to constrict the availability of fee awards (App. 180a–181a).[2]

In this Court the respondents seek to defend the decision of the court of appeals by contending that desegregation cases should be an exception to the principles established by decisions of this Court and other courts authorizing attorney fee awards on grounds other than the "conduct" of the defendant (Resp. Br. 5–7, 23–24, 26).

INTRODUCTION AND SUMMARY OF ARGUMENT

The court of appeals erred in concluding that, in the absence of express statutory authority, the only basis for an award of attorneys' fees in a school desegregation case is conduct on the part of the defendants amounting to "obdurate obstinacy."[3] The dis-

[2] The panel in this case also adopted the court's *en banc* decision in *Thompson* v. *School Board*, 472 F. 2d 177 (C.A. 4), that Section 718 of the Emergency School Aid Act of 1972, 20 U.S.C. (Supp. II) 1617, does not support an award of attorneys' fees for legal services rendered prior to June 30, 1972 (App. 186a–188a). Since we believe that the district court's award of attorneys' fees was proper on other grounds when it was made (prior to the enactment of Section 718), we do not discuss that issue.

[3] As this Court noted in *Hall* v. *Cole*, 412 U.S. 1, 5, 15, there is a line of authority for awarding attorneys' fees based on the conduct of a party in a particular case, either before or during the litigation. We do not rely upon this rationale in urging reversal of the court of appeals' decision. The "bad faith," "obdurate obstinacy," or "conduct-oriented" rationale is essen-

trict court's award of attorneys' fees in this case should have been sustained under principles previously established by this Court and other courts concerning the inherent equitable authority of federal courts to award attorneys' fees in various circumstances in the absence of explicit statutory authorization.

Thus, an award of attorneys' fees may be warranted where—as here—the plaintiff's litigation produces significant common benefits, pecuniary or otherwise, not only for the plaintiff but also for others in a group or class, thereby making it appropriate that the costs of obtaining the benefit be shared through the award of fees. Support for the fee award in this case can also be found in cases authorizing such awards where—as here—the plaintiff acts as a private attorney general in vindicating important federal constitutional or statutory policies.

The court of appeals' inference, from the lack of an express provision for attorneys' fees in related

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tially punitive in nature. *Hall* v. *Cole*, *supra*, 412 U.S. at 5. It is seriously limited as a means for inducing attorneys to handle meritorious cases challenging illegal conduct for persons unable to afford an attorney, for there is insufficient predictability as to the availability of a fee award. The "bad faith" rationale is related to other similar sanctions used to regulate the conduct of parties and attorneys. *E.g.*, Fed.R.Civ.P. 37(a), 56(g); cf. Rule 57(7) of the Rules of this Court. The propriety of its application in a particular case calls for a detailed review of conduct before or during litigation, and courts may be reluctant to award fees if to do so they must brand one side with an opprobrious characterization. In many, perhaps most, of the cases in which attorneys' fees have been awarded on this basis, an award would have been warranted under the "common benefit" or "private attorney general" rationales discussed later in the text.

legislation, that a fee award is barred in this case, is contrary to this Court's decisions requiring either an explicit limitation of the power of federal courts to award this traditional equitable remedy or such a detailed and intricate scheme of remedies that such a limitation may fairly be implied. The finding of an implied statutory bar was particularly unwarranted here, where the suit was filed pursuant to the broad grant of equitable jurisdiction in the federal courts under 42 U.S.C. 1983 to "redress" deprivations of constitutional rights.

ARGUMENT

I. FEDERAL COURTS HAVE AUTHORITY, IN THE ABSENCE OF LEGISLATION TO THE CONTRARY, TO AWARD ATTORNEYS' FEES TO A PLAINTIFF WHO AS A "PRIVATE ATTORNEY GENERAL" BENEFITS A CLASS OR GROUP BY VINDICATING CONSTITUTIONAL OR OTHER LEGAL OBLIGATIONS OF THE DEFENDANT TO THE PLAINTIFF AND OTHERS

1. The court of appeals' basic premise in this case—that, in the absence of statutory authority, attorneys' fees may be awarded only in the event of conduct constituting "obdurate obstinacy"—is contrary to the decisions of this Court. Only last term, this Court reiterated that while under "the traditional American rule" attorneys' fees may not ordinarily be awarded (in the absence of statutory or contractual authority) to a successful plaintiff in an action at law between private parties for damages,[4] "federal courts, in the exercise of their equitable powers, may award attor-

[4] *E.g.*, *Arcambel* v. *Wiseman*, 3 Dall. 306; *Day* v. *Woodworth*, 13 How. 363; *Oelrichs* v. *Spain*, 15 Wall. 211; *Hauenstein* v. *Lynham*, 100 U.S. 483.

neys' fees when the interests of justice so require." *Hall* v. *Cole, supra,* 412 U.S. at 4–5. Derived from "the original authority of the chancellor to do equity in a particular situation" (*Sprague* v. *Ticonic Nat'l Bank,* 307 U.S. 161, 166; see, *e.g., Trustees* v. *Greenough,* 105 U.S. 527, 532), this is an inherent power to be exercised in accordance with principles of equity. 412 U.S. at 5. Beyond indicating that cases warranting an award of attorneys' fees are likely to be the exception, rather than the rule (see *Mills* v. *Electric Auto-Lite Co.,* 396 U.S. 375, 391–392), this Court has not attempted to circumscribe the outer limits of this power, except, of course, to recognize that it may be limited by statute. *E.g., Fleischmann Distilling Corp.* v. *Maier Brewing Co.,* 386 U.S. 714. Rather, as this Court recognized in *Hall* v. *Cole,* "federal courts do not hesitate to exercise this inherent equitable power whenever 'overriding considerations indicate the need for such a recovery.' " 412 U.S. at 5.

One line of decisions has held the award of attorneys' fees to be proper where the plaintiff's litigation has produced significant benefits for others besides the plaintiff, such as by preventing or undoing illegal action by the defendant and thereby protecting, creating or recovering a common fund (*Trustees* v. *Greenough, supra; Central R.R. & Banking Co.* v. *Pettus,* 113 U.S. 116); by establishing a precedent that will permit others to require the defendant to respect their rights (*Sprague* v. *Ticonic Nat'l Bank, supra;* or by establishing a violation of law on a matter as to which the defendant owes a fiduciary

duty to the plaintiff and others. *E.g., Mills* v. *Electric Auto-Lite Co., supra; Hall* v. *Cole, supra.* The decisions in *Mills* and *Hall* establish that the "benefit" produced by the plaintiff's litigation need not be pecuniary in nature and need not have monetary value. *E.g., Mills, supra,* 396 U.S. at 392, 395–396; *Hall, supra,* 412 U.S. at 5–6, n. 7.

Under another line of authority, attorneys' fees have been awarded where the plaintiff acts as "private attorney general" (cf. *Newman* v. *Piggie Park Enterprises, Inc., supra,* 390 U.S. at 402) in vindicating statutory policy or constitutional commands, thereby augmenting otherwise limited governmental enforcement resources. *E.g., Lee* v. *Southern Home Sites Corp.,* 444 F. 2d 143 (C.A. 5); *Knight* v. *Auciello,* 453 F. 2d 852 (C.A. 1); cf. *Mills* v. *Electric Auto-Lite Co., supra,* 396 U.S. at 396. See, also, *Trafficante* v. *Metropolitan Life Ins. Co., supra,* 409 U.S. at 211. This Court has previously recognized the important role played by the availability of an award of attorneys' fees in cases where the authorized lawsuits by private parties are likely to be expensive to maintain to a successful conclusion and offer little or no promise of financial gain to the plaintiffs. Thus, in *Hall* v. *Cole, supra,* involving provisions authorizing private suit under the federal labor laws,[5] the Court noted that to deny attor-

[5] The provisions involved in *Hall* were excluded from the enforcement authority of the Secretary of Labor (see 29 U.S.C. 521(a); cf. 29 U.S.C. 440, 464, 482) and were therefore enforcible only by an aggrieved private party. Because the Court affirmed the attorney fee award in *Hall* on the "common benefit" rationale, it had no occasion to rely upon the "private attorney general" rationale. 412 U.S. at 5–6, n. 7.

ney fees could be "tantamount to repealing the Act itself by frustrating its basic purpose;" without the opportunity to recover counsel fees "the grant of federal jurisdiction is but a gesture, for few * * * could avail themselves of it." *Id.* at 13.[6]

2. The foregoing principles were correctly applied by the district court in its determination that attorneys' fees should be awarded here. The district court noted that, despite the obvious public importance of litigation to enforce constitutional protections, a school desegregation suit is the "sort of enterprise * * * on which any private individual should shudder to embark" in view of the cost, unlikelihood of damages, and possible hostility toward counsel involved in such unpopular causes (App. 136a). It noted further that the resources of the opposing parties are disproportionate, since "[f]ew litigants—even the wealthiest—come into court with resources at once so formidable and so suited to the litigation * * *" as was available to the tax supported respondents (App. 135a–136a). Moreover,

[6] A characteristic of many of the cases in each of these lines of authority is that the plaintiff represented a minority group or interest and only by resort to the courts could the plaintiff ensure that the defendants fulfilled their fiduciary or other obligations to persons in the plaintiff's situation. Particularly where the defendant is a governmental entity, such litigation may be regarded as a means of offsetting the possibly limited opportunities for minority interests to assure through the political process that their governing bodies fulfill their duties to them, as part of their obligations to the general community. The availability of an attorney fee award in such a case would presumably have the desirable effect of minimizing some barriers to this exercise of constitutional rights. Cf. *California Motor Transp. Co.* v. *Trucking Unlimited*, 404 U.S. 508, 513, 515; *Boddie* v. *Connecticut*, 401 U.S. 371.

> [t]he private lawyer in such a case most accurately may be described as a "private attorney general." Whatever the conduct of defendants may have been, it is intolerably anomalous that counsel entrusted with guarantying the effectuation of a public policy of nondiscrimination as to a large proportion of citizens should be compelled to look to himself or to private individuals for the resources needed to make his proof. The fulfillment of constitutional guaranties, when to do so profoundly alters a key social institution and causes reverberations of untraceable extent throughout the community, is not a private matter. * * * [T]he payment of fees and expenses in class actions like this one is a necessary ingredient of * * * a remedy. [App. 139a–140a.] [7]

Moreover, by this suit petitioners have benefited the respondent school officials and the public at large by bringing about the elimination of unlawful, discriminatory practices from the schools. They have thus

[7] When this litigation was instituted in 1961, actions by private parties provided virtually the only means of enforcement of the constitutional constraints against racially segregated schools. Although the enforcement powers of the federal government have been enlarged since then (*e.g.*, 42 U.S.C. 2000c–6, 2000d *et seq.*), actions by private parties have made and will no doubt continue to make an indispensable contribution to the effort to ensure that state and local governments observe their obligations under the Constitution and federal civil rights laws. Without deprecating in any way what has been accomplished by private litigation in this field, it is also fair to suggest that the desegregation of the Nation's public schools required by *Brown* v. *Board of Education*, 349 U.S. 294, 301, may well have been achieved with far swifter "deliberate speed" if attorneys' fee awards had more readily been perceived to be available in such cases.

benefited the people of Richmond by vindicating their Fourteenth Amendment rights—just as the corporate stockholders in *Mills* were benefited by the plaintiffs' protection of their suffrage rights and the union members in *Hall* were benefited by the plaintiff's protection of their freedom of speech. Requiring the publicly financed school board to reimburse petitioners' attorneys' fees out of its funds "simply shifted the costs of litigation to 'the class that has benefited from them and that would have had to pay them had it brought the suit.'" *Hall* v. *Cole, supra,* 412 U.S. at 7.

II. THERE WAS NO STATUTORY BAR TO THE DISTRICT COURT'S AWARD OF ATTORNEYS' FEES IN THIS CASE

The court of appeals apparently concluded that an award of attorneys' fees in this case was barred by the failure of Congress to include in the Civil Rights Act of 1964 any specific provision authorizing attorneys' fees in school desegregation cases (App. 180a–181a). That conclusion, however, was contrary to this Court's decisions concerning statutory preclusion of attorney fee awards.

While it is unquestioned that Congress can limit a federal court's inherent equitable authority to award attorneys' fees, a court ought not conclude that its power has been limited in the absence of "a definitive and absolute setting of the Congressional face against the giving of such incidental relief by the courts where compatible with sound and established equitable principles."[8] *Hall* v. *Cole, supra,* 412 U.S. at 12. As indicated by *Hall* and *Mills* v. *Electric Auto-Lite*

[8] *E.g.*, 28 U.S.C. 2412, discussed *supra*, p. 2.

Co., supra, 396 U.S. at 390–391, such a preclusion should not be inferred from the mere fact that other provisions of the legislation in question or related legislation (see pp. 2, 5, *supra*) do expressly deal with attorney fee awards. Implied preclusion may be found, of course, where Congress has so "meticulously detailed" a set of such "intricate remedies" for a statutory cause of action that it may reasonably be concluded that an award of attorney fees was meant to be excluded. *E.g., Fleischmann Distilling Corp.* v. *Maier Brewing Co., supra,* 386 U.S. at 719.[9]

Here, petitioners' cause of action derives from the Constitution and from 42 U.S.C. 1983, neither of which contains any basis for concluding that attorney fee awards are precluded in such cases. To the contrary, Section 1983 provides broadly that a person who has been deprived of rights, privileges, or immunities secured by the Constitution and laws may obtain "redress" in an action at law, suit in

[9] Our position does not suggest that an express statutory provision for attorneys' fees (such as Congress has now enacted in this field, see n. 2, *supra*) is superfluous. Such provisions may make fee awards available in cases such as private damage actions where they would otherwise not ordinarily be available under traditional equitable principles (*e.g.*, 15 U.S.C. 77k(e)); they may make such awards mandatory where a plaintiff prevails (*e.g.*, 15 U.S.C. 15); they may impose a particular standard (*e.g.*, 20 U.S.C. (Supp. II) 1617 and 42 U.S.C. 2000a–3(b), 2000e–5(k), said by this Court to call for an award of fees to a successful plaintiff "unless special circumstances would render such an award unjust," *Newman* v. *Piggie Park Enterprises, Inc., supra,* 390 U.S. at 402; *Northcross* v. *Board of Educ.*, 412 U.S. 427, 428); or they may serve simply to emphasize the view of Congress that such awards may be particularly appropriate in the type of case covered by such a provision.

equity or other proper proceeding. The express grant of equity jurisdiction is significant because this Court has held that under such a grant of jurisdiction a court may fashion any remedy that would be appropriate in the exercise of equitable jurisdiction (see, *e.g.*, *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288, 290–292; *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 399–402; *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329–330), especially in litigation not strictly private in nature. See *Virginian Ry. Co.* v. *System Federation*, 300 U.S. 515, 552.

There was, accordingly, no statutory bar to the district court's award of attorneys' fees in this case.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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BRADLEY ET AL. *v.* SCHOOL BOARD OF THE CITY OF RICHMOND ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 72-1322. Argued December 5, 1973—Decided May 15, 1974

The District Court on May 26, 1971, awarded to the successful plaintiff-petitioners, Negro parents and guardians, in this protracted litigation involving the desegregation of the Richmond, Virginia, public schools, expenses and attorneys' fees for services rendered from March 10, 1970, to January 29, 1971. On March 10, 1970, petitioners had moved in the District Court for additional relief under *Green* v. *County School Board of New Kent County*, 391 U. S. 430, in which this Court held that a freedom-of-choice plan (like the one previously approved for the Richmond schools) was not acceptable where methods promising speedier and more effective conversion to a unitary school system were reasonably available. Respondent School Board then conceded that the plan under which it had been operating was not constitutional. After considering a series of alternative and interim plans, the District Court on April 5, 1971, approved the Board's third proposed plan, and the order allowing fees followed shortly thereafter. Noting the absence of any explicit statutory authorization for such an award in this type of case, the court predicated its ruling on the grounds (1) that actions taken and defenses made by the School Board during the relevant period resulted in an unreasonable delay in desegregation of the schools, causing petitioners to incur substantial expenditures to secure their constitutional rights, and (2) that plaintiffs in actions of this kind were acting as "private attorneys general," *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402, in leading the School Board into compliance with the law, thus effectuating the constitutional guarantees of nondiscrimination. The Court of Appeals reversed, stressing that "if such awards are to be made to promote the public policy expressed in legislative action, they should be authorized by Congress and not by the courts." Following initial submission of the case to the Court of Appeals but before its decision, Congress enacted § 718 of the Education Amendments Act of 1972, which granted a federal court authority to award the prevailing party a

reasonable attorney's fee when appropriate upon entry of a final order in a school desegregation case, the applicability of which to this and other litigation the court then considered. In the other cases, the court held that § 718 did not apply to services rendered prior to July 1, 1972, the effective date of § 718, and in this case reasoned that there were no orders pending or appealable on either May 26, 1971, when the District Court made its fee award, or on July 1, 1972, and that therefore § 718 could not be used to sustain the award. *Held:* Section 718 can be applied to attorneys' services that were rendered before that provision was enacted, in a situation like the one here involved where the propriety of the fee award was pending resolution on appeal when the statute became law. Pp. 710–724.

(a) An appellate court must apply the law in effect at the time it renders its decision, *Thorpe* v. *Housing Authority of the City of Durham*, 393 U. S. 268, 281, unless such application would work a manifest injustice or there is statutory direction or legislative history to the contrary. Pp. 711–716.

(b) Such injustice could result "in mere private cases between individuals," *United States* v. *Schooner Peggy*, 1 Cranch 103, 110, the determinative factors being the nature and identity of the parties, the nature of their rights, and the nature of the impact of the change in law upon those rights. Upon consideration of those aspects here (see *infra*, (c)–(e)), it cannot be said that the application of the statute would cause injustice. Pp. 716–721.

(c) There was a disparity in the respective abilities of the parties to protect themselves, and the litigation did not involve merely private interests. Petitioners rendered substantial service to the community and to the Board itself by bringing it into compliance with its constitutional mandate and thus acting as a "private attorney general" in vindicating public policy. Pp. 718–719.

(d) Application of § 718 does not affect any matured or unconditional rights, the School Board having no unconditional right to the funds allocated to it by the taxpayers. P. 720.

(e) No increased burden was imposed since the statute did not alter the Board's constitutional responsibility for providing pupils with a nondiscriminatory education, and there is no change in the substantive obligation of the parties. Pp. 720–721.

(f) The Court of Appeals erred in concluding that § 718 was inapplicable to the petitioners' request for fees because there was no final order pending unresolved on appeal, since the language of § 718 is not to be read to mean that a fee award must be made

simultaneously with the entry of a desegregation order, and a district court must have discretion in a school desegregation case to award fees and costs incident to the final disposition of interim matters. Pp. 721–723.

(g) Since the District Court made an allowance for services to January 29, 1971, when petitioners were not yet the "prevailing party" within the meaning of § 718, the fee award should be recomputed to April 5, 1971, or thereafter. Pp. 723–724.

472 F. 2d 318, vacated and remanded.

BLACKMUN, J., delivered the opinion of the Court, in which all Members joined except MARSHALL and POWELL, JJ., who took no part in the consideration or decision of the case.

William T. Coleman, Jr., argued the cause for petitioners. With him on the briefs were *Jack Greenberg, James M. Nabrit III, Norman J. Chachkin, Charles Stephen Ralston, Eric Schnapper*, and *Louis R. Lucas*.

George B. Little argued the cause for respondents. With him on the brief were *James K. Cluverius* and *Conard B. Mattox, Jr.**

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this protracted school desegregation litigation, the District Court awarded the plaintiff-petitioners expenses and attorneys' fees for services rendered from March 10, 1970, to January 29, 1971. 53 F. R. D. 28 (ED Va. 1971). The United States Court of Appeals for the Fourth Circuit, one judge dissenting, reversed. 472 F. 2d 318 (1972). We granted certiorari, 412 U. S. 937 (1973), to determine whether the allowance of attorneys' fees

*Briefs of *amici curiae* urging reversal were filed by *Solicitor General Bork, Assistant Attorney General Pottinger, Deputy Solicitor General Wallace*, and *Gerald P. Norton* for the United States, and by *David S. Tatel* and *Armand Derfner* for the Lawyers' Committee for Civil Rights Under Law.

was proper. Pertinent to the resolution of the issue is the enactment in 1972 of § 718 of Title VII, the Emergency School Aid Act, 20 U. S. C. § 1617 (1970 ed., Supp. II), as part of the Education Amendments of 1972, Pub. L. 92–318, 86 Stat. 235, 369.

I

The suit was instituted in 1961 by 11 Negro parents and guardians against the School Board of the city of Richmond, Virginia, as a class action under the Civil Rights Act of 1871, 42 U. S. C. § 1983, to desegregate the public schools. On March 16, 1964, after extended consideration,[1] the District Court approved a "freedom of choice" plan by which every pupil was permitted to attend the school of the pupil's or the parents' choice, limited only by a time requirement for the transfer application and by lack of capacity at the school to which transfer was sought. On appeal, the Fourth Circuit, sit-

[1] See 317 F. 2d 429 (CA4 1963). Before trial, one pupil-plaintiff was admitted to the school of his choice, and the court ordered admission of the remaining 10. The District Court found that, in general, during the 1961–1962 school year, pupil assignments in Richmond were being made on the basis of dual attendance zones; that promotions were controlled by a "feeder" system whereby pupils initially assigned to Negro schools were promoted routinely only to Negro schools; and that, in the handling of some transfer requests from Negro pupils, the students were required to meet criteria to which white students of the same scholastic aptitude were not subject. The court declined, however, to grant general injunctive relief and ordered only the admission of the 10 pupils.

The Court of Appeals reversed in part. It held that not only were the individual minor plaintiffs entitled to relief, but that they were entitled to an injunction, on behalf of others of the class they represented and who were similarly situated, against the continuation of the discriminatory system and practices that were found to exist. *Id.*, at 438.